

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Denver Digital Television, LLC)	Facility I.D. No. 67532
Licensee of Station KSBS-LP, Denver, Colorado)	NAL/Acct. 201341420005
)	FRN: 0017203472

NOTICE OF APPARENT
LIABILITY FOR FORFEITURE

Adopted: March 27, 2013

Released: March 28, 2013

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”)¹ we find that Denver Digital Television, LLC (the “Licensee”), licensee of Class A television station KSBS-LP, Denver, Colorado (the “Station”), apparently willfully and/or repeatedly violated the Commission’s Rules by: (1) failing to place in its public inspection files the Station’s quarterly TV issues/programs lists, in violation of Section 73.3526(e)(11)(i)² and (2) failing to file with the Commission, and place in its public inspection files, the Station’s Children’s Television Programming Reports, in violation of Section 73.3526(e)(11)(iii)³. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of Twenty Three Thousand Dollars (\$23,000).

II. BACKGROUND

2. Section 73.3526 of the Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.⁴ As set forth in subsection 73.3526(e)(11)(i), each commercial television licensee must prepare and place in its public inspection file a TV issues/programs list which details programs that have provided the station’s most significant treatment of community issues during the preceding three month period. As set forth in subsection 73.3526(e)(11)(iii), each commercial television licensee is required to prepare and place in its public inspection file a Children’s Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts that it made during that quarter to serve the educational and informational needs of children. That subsection also requires licensees to file the reports with the Commission and to publicize the existence and location of the reports.

3. On March 24, 2011, the Deputy Chief, Video Division, Media Bureau, issued a letter to the Licensee (“Letter”), stating that Commission records indicated that it failed to make the required Form

¹ This *NAL* is issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”). *See* 47 U.S.C. § 503(b); 47 C.F.R. § 1.80. The Chief, Video Division, Media Bureau, has delegated authority to issue the *NAL* under Section 0.283 of the Rules. *See* 47 C.F.R. § 0.283.

² 47 C.F.R. § 73.3526(e)(11)(i).

³ 47 C.F.R. § 73.3526(e)(11)(iii).

⁴ 47 C.F.R. § 73.3526.

398 electronic filings for the Station for the second, third, and fourth quarters in 2009 and all four quarters in 2010. The Letter required the Licensee to provide information, supported by the declaration of a person with personal knowledge,⁵ identifying the quarters for which a Children's Television Programming Report was prepared and placed in the Stations' public inspection files, and the location of the files. The Letter further required that this information be filed within 30 days, and stated that failure to provide the requested information would result in the institution of a forfeiture proceeding and/or loss of Class A television status. On April 22, 2011, the Licensee filed a Response to the Letter, acknowledging that it failed to prepare and file Children's Television Programming Reports for the identified quarters.

4. On March 29, 2012, the Video Division sent a follow-up letter to the Licensee requesting further information about other potential deficiencies in the Station's public file. The letter requested information about when the public file was available for inspection, the persons responsible for providing access to the public file, a copy of the Station's quarterly issues/programs list for all four quarters in 2009, 2010, and 2011, and a copy of the required public inspection file documentation demonstrating that the Station complied with the requirements of Section 73.6001 of the Commission's rules.⁶

5. On December 14, 2012, the Licensee responded to the follow-up letter and made the following admissions: (i) the Station's Children's Television Programming Reports for all four quarters in 2009 and 2010 and the first quarter of 2011 were prepared, placed in the Station's public file, and electronically filed with the Commission on April 13, 2011; (ii) the Children's Television Programming Reports for the final three quarters of 2011 and the first three quarters of 2012 were prepared, placed in the Station's public file, and electronically filed with the Commission in December 2012;⁷ and (iii) the Station's quarterly/issues programs lists for all four quarters in 2009, 2010, and 2011 and the first two quarters of 2012 were prepared and placed in the Station's public file on December 9, 2012.

III. DISCUSSION

6. The Licensee's failure to place in its public inspection file the Station's quarterly TV issues/programs lists in a timely manner for 14 quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(i). Moreover, the Licensee's failure to prepare, place in its public inspection file, and electronically file with the Commission in a timely manner its Children's Television Programming Reports for 15 quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii). The Licensee does not dispute the violations. The Licensee notes that it has put in place policies to prevent future violations, but corrective actions taken to prevent subsequent violations do not relieve the Licensee of liability for the violations which have occurred.⁸

7. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully and/or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁹ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹⁰ The

⁵ 47 C.F.R. § 1.16.

⁶ 47 C.F.R. §§ 73.6001 and 73.3526(e)(17).

⁷ Certain reports were filed on December 4; the remaining reports were filed on December 6.

⁸ *WCVB Hearst Television, Inc. (WCVB-TV)*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 6128, 6129-30 (2010); *WSOC Television, Inc. (WSOC-TV)*, Notice of Apparent Liability for Forfeiture Letter, 25 FCC Rcd 6124, 6125 (2010); *WFTV, Inc. (WFTV-TV)*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 6140 (2010).

⁹ 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

¹⁰ 47 U.S.C. § 312(f)(1).

legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹¹ and the Commission has so interpreted the term in the Section 503(b) context.¹² Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹³

8. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form and a base forfeiture amount of \$10,000 for public file violations.¹⁴ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁵

9. In this case, the licensee has admitted that it failed to prepare and place in the public inspection file in a timely manner the quarterly issues/programs lists for 14 quarters, and we conclude that the Station is apparently liable for a \$10,000 forfeiture for this public file violation. The Licensee has further admitted that it failed to prepare, file with the Commission, and place in the public inspection file Children’s Television Programming Reports in a timely manner for 15 quarters, and we conclude that the Station is apparently liable for a \$10,000 forfeiture for this public file violation and a \$3,000 forfeiture for its failure to file the required forms. Based on the record before us, we therefore conclude that a total forfeiture in the amount of \$23,000 for the Station is appropriate for the Licensee’s apparent willful and/or repeated violations of Sections 73.3526(e)(11)(i) and (iii).¹⁶

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission’s Rules, that Denver Digital Television, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of Twenty Three Thousand Dollars (\$23,000) for its apparent willful and/or repeated violations of Section 73.3526 of the Commission’s Rules.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission’s Rules, that, within thirty (30) days of the release date of this *NAL*, Denver Digital Television, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. Nos.

¹¹ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹² See *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388.

¹³ 47 U.S.C. § 312(f)(2).

¹⁴ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹⁵ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4) and note to paragraph (b)(4), Section II.

¹⁶ The Licensee also failed to place the required certification of the Station’s compliance with the requirements of 47 C.F.R. § 73.6001 in its public file in a timely manner. We will exercise our discretion pursuant to Section 503(b) of the Act and admonish the Licensee for its apparent violation of Section 73.3526(c)(17) of the Commission’s Rules.

and FRN Nos. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account numbers in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Licensee will also send electronic notification on the date said payment is made to Peter.Saharko@fcc.gov.

13. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. Nos. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁷

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Denver Digital Television LLC, P.O. Box 1471, Evergreen, Colorado, 80437 and to its counsel, James M. Talens, Esq., 6017 Woodley Road, McLean, Virginia, 22101.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁷ See 47 C.F.R. § 1.1914.